



Senator Feinstein Urges Removing REAL ID from Supplemental Spending Bill Conference

-- Says REAL ID should be considered through regular order in committee --

April 22, 2005

Washington, DC – Citing specific concerns, U.S. Senator Dianne Feinstein (D-Calif.) today urged Democratic Minority Leader Harry Reid (D-Nev.) to oppose including the House REAL ID Act in the emergency supplemental appropriations bill conference report.

“I believe it is important to follow the regular order and permit the Senate Judiciary Committee to, in bipartisan manner, evaluate the merits of this complex legislation,” Senator Feinstein said in a letter to Senator Reid.

“Substantively, the REAL ID Act has the potential to significantly impact immigration and asylum law,” Senator Feinstein continued. **“It is a bill which we should consider carefully and deliberately given its possible ramifications.”**

Following is the text of the letter Senator Feinstein sent to Senator Reid:

April 21, 2005

The Honorable Harry Reid
Minority Leader
528 Hart Senate Office Building
Washington, DC 20510

Dear Senator Reid:

I remain deeply troubled by the inclusion of the REAL ID Act in the emergency supplemental spending bill. As the Senate prepares for this measure to head into conference, I would encourage you to weigh in with all conferees in opposition to the Real ID Act being included in the final reconciled legislation.

On procedural grounds alone, we should object to this controversial piece of legislation being attached to the emergency supplemental since the Senate has not been afforded the opportunity to consider, debate and amend the bill. I believe it is important to follow the regular order and permit the Senate Judiciary Committee to, in bipartisan manner, evaluate the merits of this complex legislation. I am confident the Judiciary Committee is capable of handling the task

of comprehensively reviewing the Real ID Act through hearings and discharging a bill that is balanced, appropriate and fair.

Substantively, the REAL ID Act has the potential to significantly impact immigration and asylum law. It is a bill which we should consider carefully and deliberately given its possible ramifications.

I would like to share with you some of the concerns that I have with the legislation, and which I would hope would be considered in the Judiciary Committee:

First, in the area of asylum law. It is my understanding that the REAL ID Act would amend current law in the areas of burden of proof, corroboration of evidence and credibility standards. In addition, it would also change the existing standard for granting asylum from a “well founded fear of persecution” to requiring an applicant demonstrate that the “central reason” for their persecution falls under one of the enumerated grounds. It is my understanding that this would significantly narrow the grounds for granting asylum.

Second, the provisions relating to the border fence. I happen to be in favor of completing this 3-mile stretch of California border with a fence. However, the language of this bill is so broad that it appears to provide waiver authority over laws that might impede the expeditious construction of barriers and roads *anywhere* in the United States – not just to finish the border fence in Southern California. It is my interpretation that this section of the REAL ID Act would also allow for no review or appeal of the decisions of the Secretary of Homeland Security relating to this authority. It seems to me that the authority under this provision is so broad that it would give the Secretary of the Department of Homeland Security the ability to unilaterally waive all laws to construct the border fence, including possibly wage and hour laws, criminal laws, labor law and civil rights.

Third, the issue of inadmissibility and deportability of aliens and their families due to terrorist activities. This section appears to amend current law by adding additional reasons to deny entry to individuals, or to deport them, based on past activities. It is my understanding that this could cover activities or memberships which may not have been considered inappropriate then, but are now. And while this may ultimately be necessary – it doesn’t take away from the fact that we need to carefully study and consider this section to make sure we aren’t overreaching.

Fourth, the provisions in the REAL ID Act relating to judicial review. I understand that this bill would limit, if not eliminate, stays of removal while cases are pending in the federal courts. In addition, that it would eliminate, for the first time in our Nation's history, *habeas corpus* review of removal orders for both criminal and non-criminal immigrants. It would also limit the ability of the courts of appeal to review mixed questions of law even in cases of longtime, lawful permanent residents, if virtually any crime led to their deportation. I am very concerned about the provisions relating to judicial review and believe we should have the opportunity to consider them carefully.

Fifth, delivery bonds. The REAL ID Act appears to essentially create bounty hunters by increasing the authority of bail bondsmen to arrest and detain anyone they believe is illegal. The language in the REAL ID Act appears to leave it up to a bondsman's opinion that an alien poses a flight risk which necessitates them being turned over to the Department of Homeland Security. If that is the case, the alien could forfeit his or her bond premium under very broad circumstances. In

addition, these provisions appear to require that all illegal aliens turned over to the Department of Homeland Security be detained – even at a time when immigration officials have not proven they can detain all of the aliens they apprehend today. Finally, the provisions appear to provide bail bondsmen with unfettered access to information on illegal aliens and to influence Government processes with non-citizens subject to bonding. I do not know that we should be giving bail bondsmen this authority without any hearing in the Senate or any consequential discussion in the House on this point.

Finally, is the issue of driver's licenses. I know that you recently received a letter from Senators Lieberman, Durbin, Sununu and Alexander on this point specifically. I have to say that I agree with the points they raise in their letter and won't belabor the point here.

I urge you to work toward ensuring that this controversial piece of House legislation is not included on the emergency supplemental spending bill in the conference report. The emergency supplemental spending bill is a bill which should be narrowly tailored to support our troops in Iraq and Afghanistan, as well as provide aid to tsunami victims. It should not include such a significant, and controversial, piece of immigration legislation as the REAL ID Act.

Sincerely,

Dianne Feinstein

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